

REFERENCE TITLE: private property rights; eminent domain

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## **HB 2226**

Introduced by  
Representative Konopnicki

AN ACT

AMENDING SECTIONS 36-1471 AND 36-1478, ARIZONA REVISED STATUTES; RELATING TO SLUM CLEARANCE AND REDEVELOPMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 36-1471, Arizona Revised Statutes, is amended to  
3 read:

4           **36-1471. Definitions**

5       In this article, unless the context otherwise requires:

6           1. "Area of operation" means the area within the territorial  
7 boundaries of the municipality.

8           2. "Blighted area" means an area, other than a slum area, where sound  
9 municipal growth and the provision of housing accommodations is substantially  
10 retarded or arrested in a predominance of the properties by any of the  
11 following:

12           (a) A dominance of defective or inadequate street layout.

13           (b) Faulty lot layout in relation to size, adequacy, accessibility or  
14 usefulness.

15           (c) Unsanitary or unsafe conditions.

16           (d) Deterioration of site or other improvements.

17           (e) Diversity of ownership.

18           (f) Tax or special assessment delinquency exceeding the fair value of  
19 the land.

20           (g) Defective or unusual conditions of title.

21           (h) Improper or obsolete subdivision platting.

22           (i) The existence of conditions that endanger life or property by fire  
23 and other causes.

24           3. "Bonds" means any bonds, including refunding bonds, notes, interim  
25 certificates, debentures or other obligations.

26           4. "Clerk" means the clerk or other official of the municipality who  
27 is the custodian of the official records of the municipality.

28           5. "Commission" or "slum clearance and redevelopment commission" means  
29 an agency of a municipality created pursuant to section 36-1476.

30           6. "ECONOMIC DEVELOPMENT" MEANS ANY ACTIVITY TO INCREASE TAX REVENUE,  
31 THE TAX BASE, EMPLOYMENT OR GENERAL ECONOMIC HEALTH IF THAT ACTIVITY DOES NOT  
32 RESULT IN:

33           (a) THE TRANSFER OF LAND TO PUBLIC OWNERSHIP.

34           (b) THE TRANSFER OF LAND TO A PRIVATE ENTITY THAT IS A RAILROAD,  
35 UTILITY OR ANY OTHER COMMON CARRIER.

36           (c) THE TRANSFER OF PROPERTY TO A PRIVATE ENTITY IF EMINENT DOMAIN  
37 WILL REMOVE A THREAT TO PUBLIC HEALTH OR SAFETY, SUCH AS THE REMOVAL OF  
38 PUBLIC NUISANCES, THE REMOVAL OF STRUCTURES THAT ARE BEYOND REPAIR OR THAT  
39 ARE UNFIT FOR HUMAN HABITATION OR THE ACQUISITION OF ABANDONED PROPERTY.

40           (d) THE LEASE OF PROPERTY TO PRIVATE ENTITIES THAT OCCUPY AN  
41 INCIDENTAL AREA WITHIN A PUBLIC PROJECT.

42           6. 7. "Federal government" includes the United States or any agency  
43 or instrumentality, corporate or otherwise, of the United States.

44           7. 8. "Local governing body" means the council or other legislative  
45 body charged with governing the municipality.

1        ~~8.~~ 9. "Mayor" means the mayor of a municipality or other officer or  
2 body having the duties customarily imposed ~~upon~~ ON the executive head of a  
3 municipality.

4        ~~9.~~ 10. "Municipality" means any incorporated city or town in the  
5 state.

6        ~~10.~~ 11. "Obligee" includes any bondholder, agents or trustees for any  
7 bondholders, or lessor demising to the municipality property used in  
8 connection with a redevelopment project, or any assignee or assignees of a  
9 lessor's interest or any part thereof, and the federal government when it is  
10 a party to any contract with the municipality.

11       ~~11.~~ 12. "Person" means any individual, firm, partnership, corporation,  
12 company association, joint stock association or body politic, and includes  
13 any trustee, receiver, assignee or other similar representative thereof.

14       ~~12.~~ 13. "Public body" means the state or any municipality, county,  
15 village, board, commission, authority, district or any other subdivision or  
16 public body of the state.

17       14. "PUBLIC USE":  
18       (a) MEANS ANY OF THE FOLLOWING:  
19           (i) THE POSSESSION, OCCUPATION AND ENJOYMENT OF THE LAND BY THE GENERAL  
20 PUBLIC OR BY PUBLIC AGENCIES.

21           (ii) THE USE OF LAND FOR THE CREATION OR FUNCTIONING OF PUBLIC  
22 UTILITIES.

23           (iii) THE ACQUISITION OF PROPERTY TO CURE A HARMFUL EFFECT OF THE  
24 CURRENT USE OF THE LAND, INCLUDING THE REMOVAL OF STRUCTURES THAT ARE PUBLIC  
25 NUISANCES, BEYOND REPAIR OR UNFIT FOR HUMAN HABITATION OR USE.

26           (iv) THE ACQUISITION OF ABANDONED PROPERTY.  
27       (b) DOES NOT INCLUDE THE PUBLIC BENEFITS THAT RESULT FROM ECONOMIC  
28 DEVELOPMENT.

29       ~~13.~~ 15. "Real property" includes all lands, including improvements and  
30 fixtures on the land, and property of any nature appurtenant to the land, or  
31 used in connection with the land, and every estate, interest and right, legal  
32 or equitable therein, including terms for years and liens by way of judgment,  
33 mortgage or otherwise and the indebtedness secured by the liens.

34       ~~14.~~ 16. "Reveloper" means any person, partnership or public or  
35 private corporation or agency ~~which~~ THAT enters or proposes to enter into a  
36 redevelopment contract.

37       ~~15.~~ 17. "Redevelopment contract" means a contract entered into between  
38 a municipality and a redeveloper for the redevelopment of an area in  
39 conformity with a redevelopment plan.

40       ~~16.~~ 18. "Redevelopment plan" means a plan, other than a preliminary or  
41 tentative plan, for the acquisition, clearance, reconstruction,  
42 rehabilitation or future use of a redevelopment project area.

43       ~~17.~~ 19. "Redevelopment project":  
44       (a) Means any work or undertaking:

1       (i) To acquire slum or blighted areas or portions of these areas and  
2 lands, structures or improvements, the acquisition of which is necessary or  
3 incidental to the proper clearance or redevelopment of these areas or to the  
4 prevention of the spread or recurrence of slum conditions or conditions of  
5 blight in the area.

6       (ii) To clear any areas by demolition or removal of existing  
7 buildings, structures, streets, utilities or other improvements thereon and  
8 to install, construct or reconstruct streets, utilities and site improvements  
9 essential to the preparation of sites for uses in accordance with a  
10 redevelopment plan.

11      (iii) To sell, lease or otherwise make available land in areas for  
12 ~~residential, recreational, commercial, industrial or other use or for~~ public  
13 use or to retain land for public use, in accordance with a redevelopment  
14 plan.

15      (b) Includes the preparation of a redevelopment plan, the planning,  
16 surveying and other work incident to a redevelopment project and the  
17 preparation of all plans and arrangements for carrying out a redevelopment  
18 project.

19      ~~18.~~ 20. "Slum area" means an area in which both of the following are  
20 true:

21       (a) There is a predominance of buildings or improvements, whether  
22 residential or nonresidential.

23       (b) The public health, safety or welfare is threatened because of any  
24 of the following:

25       (i) Dilapidated, deteriorated, aging or obsolescent buildings or  
26 improvements.

27       (ii) The inadequate provision for ventilation, light, air, sanitation  
28 or open spaces.

29       (iii) Overcrowding.

30       (iv) The existence of conditions that endanger life or property by  
31 fire and other causes.

32      Sec. 2. Section 36-1478, Arizona Revised Statutes, is amended to read:

33      ~~36-1478.~~ Eminent domain

34      A. A municipality may acquire by condemnation any interest in real  
35 property, including a fee simple title to that real property, ~~that~~ it deems  
36 necessary for or in connection with a redevelopment project under this  
37 article, after the adoption by the local governing body of a resolution  
38 declaring that the acquisition of the real property described in that  
39 resolution is necessary for those purposes. **THE MUNICIPALITY MUST ESTABLISH  
40 THE NECESSITY OF THE ACQUISITION BY CLEAR AND CONVINCING EVIDENCE.**

41      B. Before a municipality may initiate a condemnation action it must  
42 make a good faith effort to negotiate the purchase of the property. If the  
43 municipality determines that it cannot acquire the property without the use  
44 of a condemnation action it must notify the property owner of the time, date  
45 and location of the public meeting concerning the municipality's proposed

1 action. The municipality must provide this notice by certified mail to the  
2 property owner's address as stated on the most recent records of the county  
3 assessor.

4 C. The governing body of a municipality must authorize the  
5 condemnation of real property by a vote of at least two-thirds of its  
6 members.

7 D. A municipality may exercise the power of eminent domain in the  
8 manner provided in ~~articles 2 or 3 of chapter 8~~, title 12, CHAPTER 8, ARTICLE  
9 2 OR 3 or in the manner provided by any other applicable statutory provisions  
10 for the exercise of the power of eminent domain.

11 E. PROPERTY ALREADY DEVOTED TO A PUBLIC USE MAY BE ACQUIRED IN LIKE  
12 MANNER, BUT REAL PROPERTY BELONGING TO THIS STATE OR ANY POLITICAL  
13 SUBDIVISION OF THIS STATE SHALL NOT BE ACQUIRED WITHOUT ITS CONSENT.

14 F. A MUNICIPALITY MAY NOT ACQUIRE BY EMINENT DOMAIN PRIVATE PROPERTY  
15 FOR ECONOMIC DEVELOPMENT OR FOR A PRIVATE COMMERCIAL ENTERPRISE WITHOUT THE  
16 CONSENT OF THE OWNER OF THAT PROPERTY. THIS SUBSECTION DOES NOT PREVENT THE  
17 TRANSFER OR LEASE OF PRIVATE PROPERTY THROUGH EMINENT DOMAIN TO:

- 18 1. PRIVATE ENTITIES THAT ARE COMMON CARRIERS.
- 19 2. PRIVATE ENTITIES THAT OCCUPY AN INCIDENTAL AREA WITHIN A PUBLIC  
20 PROJECT.
- 21 3. ELIMINATE A THREAT TO PUBLIC HEALTH OR SAFETY.